

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

**PETER T. YOUNG**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - LAND

**DEAN NAKANO**  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**MINUTES  
MAUI/LANAI ISLAND BURIAL COUNCIL MEETING**

**DATE: THURSDAY, SEPTEMBER 29, 2005  
TIME: 9:00 A.M.  
PLACE: COUNTY OF MAUI  
PLANNING DEPARTMENT  
KAULANA PAKU'I BUILDING 1<sup>ST</sup> FLOOR  
250 S. HIGH STREET  
WAILUKU, HI 96793**

**ATTENDANCE:**

<b>Members:</b>	Charles Maxwell, Chair Dana Naone Hall, Vice-Chair Kema Kanakaole Keeaumoku Kapu William Frampton Edward Kaahui Scott Fisher	
<b>Absent:</b>	Leslie Kuloloio Pualani Paoa Mei Lee Wong	(excused) (excused) (excused)
<b>Staff:</b>	Kawika Farm, Clerk Stenographer II Vince Kanemoto, Deputy Attorney General Melissa Kirkendall, Maui Archaeologist	
<b>Guest:</b>	Larry Sumida Curt Tokunaga Uilani Kapu Lisa Rotunno-Hazuka	Kamanao Mills Kaipo Kekona Rachel Kapu Mike Dega

**I. OPENING REMARKS**

MLIBC Chair, Charles Maxwell calls the meeting to order at 9:13 am. A quorum was met and council members Keeaumoku Kapu, Ed Kaahui, Kema Kanakaole, Charles Maxwell, Dana Hall, William Frampton and Scott Fisher identified themselves. Maxwell calls on Kanakaole to give the *pule wehe*.

## **II. APPROVAL OF MEETING MINUTES**

**July 27, 2005**

**August 25, 2005**

Hall said she had a few corrections to the August 25, 2005 minutes. Hall said on page 11, the second sentence in the third paragraph which reads, "Dega said he doesn't think this item is allowed to be a determination," Hall mentioned Deputy Attorney General, Vince Kanemoto clarified that NAGPRA (Native American Graves Protection and Repatriation Act) was the applicable statute for the Keokea item. Hall asked SHPD (State Historic Preservation Division) staff Kawika Farm if Mike Dega had requested item A of the August 25, 2005 agenda be put on for a determination, to which Farm answered yes. Hall said the second sentence in the third paragraph should be changed to read, "Dega said he had asked that the Keokea item be placed on the agenda for a determination." Hall said on page 18, the third sentence in the third paragraph should be changed from "Fortini said he wasn't sure because he was prompted," to "Fortini said he wasn't sure." Hall asked Maxwell if the word "can" in the last sentence in the third paragraph on page 18 should be replaced with the word "can't." Maxwell read the sentence and agreed with Hall that the word should be changed from "can" to "can't." Hall asked Maxwell for clarification on the second to the last sentence in the second paragraph on page 25 which reads, "Maxwell mentioned Jerry Hasson had passed away about a year and a half ago." Maxwell was also confused about the sentence and said the person he mentioned who had passed away was Mr. Hansen formerly of Whaler's Village who he had negotiated with on the matter pertaining to the ebay *poo*. Hall suggested amending the sentence to read "Maxwell mentioned that the former manager (Mr. Hansen) of Whaler's Village passed away about a year and a half ago."

**Hall moved and Fisher seconded, "that the Maui / Lanai Islands Burial Council approve the July 27, 2005 minutes and approves the August 25, 2005 minutes as amended, corrected and clarified."**

**VOTE: ALL IN FAVOR. The motioned carried unanimously.**

## **III. BUSINESS**

### **A. THE DEPARTMENT OF HAWAIIAN HOME LANDS (DHHL), KULA RESIDENTIAL LOTS, UNIT 1 OF KEOKEA SUBDIVISION, KEOKEA AHUPUAA, MAKAWAO DISTRICT, MAUI ISLAND, HAWAII; TMK: 2-2-02:55**

**Information / Recommendation:** Consult with DHHL on revised burial treatment plan to preserve in place ancestral burials and human skeletal remains at 12 sites located within Unit 1 of Keokea subdivision and other recommendations relating to burial sites within the project area.

Mike Dega of Scientific Consultant Services (SCS) the contracted archaeologist for DHHL identified himself. Kamaano Mills, Special Assistant of DHHL identified himself. Dega mentioned Larry Sumida who's the head of land division for the DHHL was also present. Dega said since the last meeting, he, Mills and Sumida along with others from the DHHL had been in discussion trying to address some of the concerns brought up by the council. To refresh the item Dega gave some background information. Dega said there were 12

burial sites on Keokea and what was being discussed was the buffer zones and what would happen if during monitoring, inadvertent burials were found.

Hall asked Mills for an update on the discussions which occurred with DHHL during the interim, specifically with reference to the council's concern about a 3 meter permanent buffer being inadequate because it was a buffer area of less than 10 feet. Hall said if the area being discussed was strictly a small residential lot then the idea of having such a small buffer could be understood. Hall said because the area being discussed were agricultural lots which are much larger in size and there was a likelihood that repeated activities such as farming and landscaping would occur over a long period of time, gives cause for the council's concern for a minimum of 5 meter buffers with the opportunity to expand buffer zones if warranted upon further review of a site. Hall said the second issue the council wanted addressed was the possibility of archaeological field checks of each lot prior to any land disturbing activities and the possibility of ongoing archaeological monitoring which the DHHL would provide for the lessees and lot owners. Hall said along with DHHL providing ongoing archaeological monitoring at least in the beginning stages of ground altering activities, that DHHL also include an overall monitoring plan for the project area. Hall said the third item the council wanted addressed was on the matter of educational packets. Hall said the packets would include historical and archeological information as well as protocol on what to do in the event that both inadvertent burials and non-burial sites were encountered. Hall inquired about the possibility of an orientation session for the lessees educating them on the cultural and historical resources. Maxwell said he would like to see some language within the burial treatment plan on who would administer protection and be responsible for the sites at Keokea in the future.

Mills said a consultation meeting with DHHL had occurred in which the issue of having educational packets was discussed. Mills said the DHHL has a lot of prototype programs undergoing within the Hawaiian community. Mills said DHHL plans to install the infrastructure and roadways and leave the (inaudible) sites on the property intact. Mills acknowledged there could be problems during grubbing and grading and other ground altering activities. Mills said he felt DHHL had a good idea of what sites and features were on the surface, but mentioned it was the burials beneath the surface that impact house cost.

*Mills handed out copies of the DHHL Undivided Interest Award Program (UIAP) pamphlet.*

Mills said what the handout describes was a new prototype program for DHHL which allows families time to prepare and collect their finances. Mills said another prototype program was created as part of the UIAP called HOAP which helps a lessee with credit card consolidation and reestablishing credit. Mills said as a result of HOAP another prototype program was created so all potential lessees at Waiohuli would get a news letter that would help to inform and educate the lessees about up coming development and the status of their own development at Waiohuli. Mills said the informative news letter program was the result of a meeting with DHHL that leads to the creation of another prototype program which is the Waiohuli Cultural and Burial Training and Assistance Program. Mills said the DHHL is proposing to implement the program in three phases which would be to inform, educate and train lessees.

Mills said the first phase would be to inform the Waiohuli beneficiaries about the archaeological and burial sites that exist at the Waiohuli area, because ultimately the lessees would become stewards of the area. Mills said the second phase would be to educate the Waiohuli lessees about the sites in the area as to what are these sites and why are these sites significant. Mills said education would also include, knowing what to do if recovering a burial from ground altering activities, who to contact, who to call and if the lessee wants to preserve the site onto the property. Mills said the third phase would be training. Mills said training would help lessees to become adequate stewards by better understanding how to care for a preservation site, knowing what was a buffer zone and anything else that would help a lessee become more of a competent steward, should the lessee have a lot with a site present. Mills mentioned that if DHHL got the council's blessing on the three phase program and because the program was something totally new, the next step DHHL would take would be to solicit assistance from professionals within the community to help administer and operate the program. Mills said if the council feels DHHL was moving in the right direction with the proposed plan then DHHL would be happy to do a formal write up and implement the plan immediately. Mills said the plan would help to address some concerns about possible new archaeological and burial sites arising in the future.

Maxwell said he thought the proposed program was worthwhile but was something that should have been done a long time ago. Maxwell said that at Waiohuli, people have shared with him that after they had done some ground altering activities, *pohakus* belonging to terraces among other things were found. Maxwell said the proposed program allows lessees to be proactive in caring for site which may be on their lots and thought the program was a good idea.

Hall asked Mills who was meant when he had said "professionals" and she asked if Mills had any particular entities in mind. Mills said if the program was something the council blesses then DHHL would start the process of getting a request for proposals. Mills said DHHL would then solicit proposals within the community to see if there was anyone who would want to take the lead in implementing the Cultural and Burial Training and Assistance Program. Mills mentioned that the DHHL would have certain entities in mind but really wants the community to get involved. Mills said once DHHL receives proposals from the community DHHL would then go through the process of selecting someone to take the lead on the program. Mills said the same process was used for the HOAP program and DHHL selected the Council for Native Hawaiian Advancement to operate the Home Ownership Assisted Program (HOAP). Mills mentioned part of the process included discussions within DHHL to determine which office (i.e. Homesteaders Association, Office of Land Development and Division) would take the lead to work together along with which ever entity was chosen.

Hall asked Mills what his position was within DHHL and said she'd feel a little more confident and comfortable with the proposal if the council had an idea of who within DHHL would be helping to oversee the program, as well as whichever contractor(s) were selected. Hall said the issues being dealt with was very important with respect to Hawaiian lands and she hopes DHHL will have a close working relationship with whichever consultants were hired. Hall said she wanted to know who within DHHL or which division within DHHL would be interacting most frequently with whichever contractor is hired. Mills said he would have a role with the program. Mills said initially the planning office within

DHHL would operate the program. Mills said as development continues, the program would most likely be transferred to the HOAP coordinator. Mills mentioned he would like to play a role throughout the program process. Hall agreed with Mills willingness to be involved with the program and said DHHL needs to be able to independently assess the viability and appropriateness of the program being developed. Hall mentioned that she was not really satisfied with the idea yet. Mills acknowledged Halls lack of satisfaction and said the issue being discussed was uncharted waters for DHHL and they were also learning about how to implement the prototype programs. Mills said DHHL would wisely accept advice from the council on these issues because it was something that was never done before.

Kaahui asked if the DHHL had a archaeologist on staff, to which Mills answered no. Kaahui said the Department of Land and Natural Resources (DLNR) has their own staff and was wondering why the DHHL couldn't have their own staff on hand as well instead of contracting work out to consultants. Maxwell said he would like to see the day when there are Hawaiian archaeologists working within DHHL. Maxwell said there are Hawaiian archaeologists with the talent and *mana* who could be working for the DHHL. Maxwell mentioned that every job involving DHHL, involves contracted archaeologists.

For clarification Kapu asked Mills what were the responsibilities of the Council of Native Hawaiian Advancement. Mills said because of the implementation of the new Undivided Interest Awards Program, the Council of Native Hawaiian Advancement helped lessees to obtain better credit and obtain financial literacy training through another new program called HOAP. Mills said the point he's trying to make was that everything was in uncharted waters and DHHL was learning as they go along and creating the program from scratch. Mills said he hopes the same approach would be used for the Waiohuli Cultural and Burial Training and Assistance Program as well. Mills said DHHL was simply trying to develop a process which works. Kapu said at the last month's meeting (August 25, 2005) he brought up the issue of a cultural inventory assessment and asked if one had been completed. Dega said a cultural inventory assessment was done in 2001 by SSFM. Kapu said an inventory assessment helps him to better understand the origin and dynamics of an area. Kapu asked if Maui Community College (MCC) had courses or workshops pertaining to archaeology. Melissa Kirkendall said currently MCC didn't offer any courses or workshops. Kapu said that if DHHL only focuses on creating some type of stewardship program to train lessees on how to respond to certain situations pertaining to archaeological and burial sites, but did not create anything with administrative standings, then he doesn't know how effective the program would be later in the future. Maxwell said he felt it was important that if a project was on a particular island, to have someone from the same island as the project to conduct the work. Mills said DHHL is open to utilizing all the comments and help they can get pertaining to the new program. Maxwell said in order for the program to work, DHHL should have a qualified Hawaiian archaeologist to oversee the entire program and pull all the various parts together for each island.

Hall addressed Mills and said both he and Kanai Kapeliela (former employees of SHPD) have substantial background with issues pertaining to burials and preservation of sites. Hall said to her it would make a lot of sense that given the significance of the land it would be a great time for DHHL to come to terms with dealing with issues of historic preservations on their own lands for both burial and non-burial sites. Hall said it would make sense to have some type of program within DHHL that would provide the same type

of direction and expertise as the burial sites program on the state level. Hall said a program of this nature is warranted for DHHL and suggested the program could be broader to include all cultural and archaeological concerns. Hall said she felt DHHL should have people on staff and not just contracted to provide the functions she had mentioned. Hall said the people on staff wouldn't have to be in the field to survey 700 acre parcels because large jobs of that nature could be contracted, but people on staff could at least review the reports for DHHL and make appropriate comments among other things. Hall said before all jobs are contracted out, suggested DHHL establish a program within the department to deal with the issues being discussed. Hall addressed Mills and said DHHL already has some people on staff such as yourself and Kapeliela who are qualified to be part of an on staff program. Hall said once an on staff program was created, then DHHL could decide what elements needed to be contracted. Hall said the oversight and the ultimate responsibility should be based in the DHHL and not as a distant overseer. Hall said the land with the sites being discussed have survived for centuries and to see those sites wiped out because of a lack of proper education and a lack of proper attention and the lack of time to really understand what was present, would be a tremendous loss for the Hawaiian people and the state. Hall said she was happy these issues were arising so strongly on Maui with both the Keokea and Waiohuli projects. Hall said she was also glad the council had an opportunity to still do something responsible with respect to Keokea and Waiohuli.

Maxwell reiterated what was said by Hall and mentioned it could also be a selling point for DHHL because Hawaiians would be on the property taking care of their own and becoming responsible people of the land. Kanakaole agreed with what was shared by both Hall and Maxwell. Kanakaole said he too thought it would be a good idea to put more responsibility on DHHL. Fisher said he wanted to endorse the ideas being discussed because in a sense it helps to build up a community by having a strong link to the past as well as the future. Hall said basically the DHHL would be giving the lessees the opportunity to strengthen their culture because the lessee would not just be given the land to do as they please. Hall said the lessees would be given land and the responsibility to *malama* the land in a way that preserves and protects the Hawaiian heritage.

Maxwell asked what was the projected timeline on the matter being discussed. Mills said once the prototype program was blessed, he would keep the council informed as to how long the development process may be. Hall said the council would appreciate the opportunity to continue to consult with DHHL. Hall reiterated how certain elements could be contracted but the majority of oversight should remain within DHHL. Hall said the issue of conducting field checks on each lot prior to development still looms. Kirkendall agreed with Hall on the subject of field checks and asked Mills if DHHL has reached the point of addressing field checks and having the information included in the educational packets. Mills answered no. Kirkendall said from SHPD's standpoint, there would need to be some sort of field check because of the fact that the archaeologist who originally did some of the inventory missed sites and not all areas were fully explored because of the immense vegetation that existed. Kirkendall said prior to development when the lessee first goes to see their lot, would be a good time to start a field inspection for both burial and non-burial sites. Mills asked if Kirkendall was talking about archaeological monitoring prior to development. Kirkendall said she would want a field check completed first on a specified area of land which would be the awarded lots rather than inventorying hundreds of acres. Kirkendall said it's a lot easier to deal with a smaller segment of land because the

archaeologist would know what should be present on the lot based on the previous inventory survey and the archaeologist would be better able to predict what might be present or what may have been missed given the prior vegetation.

Hall added to what Kirkendall mentioned and said the sooner it's done would be best because then DHHL would have the widest range of options. Hall said the sooner a lessee was notified about what may be on his or her lot the better it would be for all concerned. Hall said if sites to be preserved need to be re-identified, it would be much better to have the sites surveyed so there would be survey descriptions on maps of the deeds or lease. Hall asked Dega to correct her if she was incorrect and said during data recovery work conducted by SCS at Keokea and Waiohuli, the recording of new sites were not included. Dega said the recording of new sites were mapped and included during the data recovery. Dega said at Waiohuli SCS did a very thorough job mapping out every site in the project area both in the roads and outside the roads. Dega said SCS knows what type of site was present on each lot. Dega mentioned the extensiveness of work conducted at Waiohuli was not conducted for Keokea. Hall said she knows at both Waiohuli and Keokea there were additional features found for identified sites and asked Dega if he was saying that at Waiohuli, in addition to the new features identified, if SCS identified other sites apart from sites previously identified. Dega said that was correct, and mentioned SCS identified sites which were never recorded ever. Hall asked if all the new sites would be given SIHP numbers, to which Dega answered yes.

Maxwell interjected and mentioned he had just spoken with a gentlemen who lives in Waiohuli and the gentlemen told him numerous sites were found and preserved, but was not documented. Maxwell said somehow the sites he was informed about was missed during the inventory survey and needs to be documented. Dega said the sites Maxwell was referring to were missed during the inventory survey conducted in 1989 by PHRI. Dega said at Waiohuli SCS did a data recovery, an additional inventory survey and an additional reconnaissance request. Dega said for Waiohuli there would be a relatively low probability of finding unidentified sites. Kirkendall said a point which needed to be looked at was the fact that in Waiohuli people have been moving onto the lots when no field checks had been conducted. Kirkendall said there was also a lack of having a systematic means of documenting sites and assigning SIHP numbers.

Kapu asked once property is allotted to families, if there was a jurisdictional area where if a site was found by a family, could DHHL step in to address the issue. Mills answered yes. Kapu asked what would happen if a family didn't say anything and didn't report a site was found. Mills said DHHL would most likely make some sort of reference within a families lease document to address what Kapu had mentioned. Mills said the lease document would identify all of the stewardship responsibilities as well as things the DHHL would and may withhold. Mills said DHHL would also be releasing a residency handbook identifying all the rights, roles and responsibilities of the lessees and the DHHL. Mills said there was a section of the handbook which deals with archaeological sites and burials. Kapu asked if a new site was found, would DHHL have to do another assessment. Kirkendall recognized the fact of being in new territory or uncharted waters and said a notification process needed to be developed. Kirkendall said if a site was found someone from DHHL should notify her or SHPD immediately and the lessee could even notify the Homeowners Association if the situation may be too cumbersome to notify SHPD. Kirkendall said a process could be established to specifically identify who would be contacted under various

situations. Kirkendall said she would be happy to help in facilitating some ideas on establishing a notification process and start implementing the process right away for the benefit of everyone involved.

Kaahui asked Dega the status and breakdown of the cultural impact assessments (CIA) and if they were totally completed. Dega said the CIA for Keokea was completed in 2001 by SSFM, for Waiohuli Phase I the cultural assessment was conducted by Munekiyo & Haraga and for Waiohuli Phase II the cultural assessment was being conducted by MLIBC Chair, Charles Maxwell. Dega said the cultural assessment for all three areas were close to being finished or was already completed. Dega said the cultural assessments should be available with the DHHL. Kaahui said he asked the question because when he reads a plan, in respect to culture, he had no clue about the area and would like to have the cultural assessment included with plans so he would have a better understanding of an area. Maxwell said there should be correlation between the archaeologist and (inaudible) and the cultural things found on the property in ancient times up until the modern era. Maxwell said sometimes these things can't always happen and mentioned in the particular issue brought up by Kaahui, the correlation Maxwell described did not happen. Maxwell said his report was still incomplete although it was approved and used. Hall interjects to tell Maxwell he couldn't speak any further on his involvement with Waiohuli. Hall did say that if Maxwell wanted to speak about the earlier phases of Keokea and Waiohuli, prior to his direct involvement then that would be fine. Hall asked Mills if she could be sent a copy of the completed cultural assessments conducted for Keokea and Waiohuli so if other council members wanted to borrow the cultural assessments, they would have the opportunity. Hall cautioned the council members that they may be disappointed with the information contained within the cultural assessments because a lot of things were sort of generalized and may be dependent on existing historical documentary research. Maxwell pointed out that the cultural assessment completed by Michael Kolb in 1997 was not as accurate in identifying all the sites as known presently with the addition of new sites and features being discovered. Dega said the nature of archaeology doesn't claim to find everything that may be present on a given area.

Hall asked about the buffer zones. Mills said setting the buffer zones at 5 meters seems to be okay but DHHL would need to check with the lessees to see if they are in agreement to the idea. Maxwell said the buffers shouldn't be set at 5 meters because there may be certain situations that call for a larger buffer zone. Maxwell said the size of the archeological find or burial should dictate the actual size of the buffer area. Maxwell mentioned DHHL also had the option of designating more land to be an additional preservation area. Dega agreed with Maxwell and said given the different shapes and sizes of sites being preserved as well as being present on various portions of landscaping and topography also suggested the buffers be set at a minimum of 5 meters with the option of expanding the buffers as needed. Dega said he spoke with the lessees and came to sort of a compromise of having a minimum of 5 meters set for buffers during any construction work on individual parcels or during infrastructure work such as the road ways with the opportunity to have permanent buffer zones and everything would be done at 3 meters. Maxwell asked if Dega was talking about the burials or any of the archaeological sites. Dega said he was only speaking about the burials. Hall said she still thought there may be problems with having small buffer zones and suggested the council continue to discuss the issue with DHHL to see how it goes.



**B. THE DEPARTMENT OF HAWAIIAN HOME LANDS (DHHL), WAIOHULI RESIDENTIAL LOTS, WAIOHULI AHUPUAA, MAKAWAO DISTRICT, MAUI ISLAND, HAWAII; TMK: 2-2-02:56 POR.**

**Information / Recommendation:** Consult with DHHL on burial sites identified during archaeological inventory survey and data recovery research, and other recommendations relating to burial sites within the project area.

Maxwell asked if anyone in the audience wanted to give an oral testimony on item B of the agenda. No oral testimony was offered. Maxwell said he had to temporarily recuse himself from the meeting due to a conflict of interest. Maxwell said he was a consultant for CKM Cultural Resources LLC who was conducting the cultural assessment for DHHL on this particular agenda item. Maxwell turned the meeting over to the Vice-Chair.

*Acting Chair, Hall called a recess due to a lack of quorum at 10:15 a.m. Hall reconvenes the meeting at 10:19 a.m.*

(Dega handed out a map of Waiohuli.)

Dega of SCS archaeology said at last month's meeting (August 25, 2005) he and Mills had discussed with the council, 6 known burials which were highlighted on the map and found during an inventory survey conducted by Kolb et al in 1997 as well as 4 additional burials which were identified during data recovery by SCS in 2004-2005. Dega acknowledged that the council had a few issues they wanted addressed one being the size of buffer zones and the other being Road F which had a burial in the middle of the road. Mills suggested starting with Road F and introduced Larry Sumida, the Land Development Division's Administrator for DHHL.

Sumida said he works directly with the engineers on the projects of Keokea and Waiohuli. Sumida said as a result of last month's meeting, Mills had spoken with him about the council's concern regarding Road F. Sumida said he went to the engineers and asked them if the road could be moved. Sumida said after looking at the situation from an engineering standpoint and also keeping in mind the cultural and burial aspect of the situation, several options were discussed. Sumida said one options was to have the road end just before the burial leaving a cul de sac on both sides. Sumida said the option would deprive 12-16 lots from the Keokea subdivision of having direct access from Road F. Sumida said the possibility of moving Road F either up or down would pose additional problems. Sumida said if the road was moved down then the grade of the road would have to be changed. Sumida said if the road was moved upwards then more of the bank would have to be cut into which could lead to disturbing more burials. Sumida said the engineers recommended Road F be kept where it was because plans were already submitted to the county for approval. Sumida said if plans for Road F were changed it would delay the process for obtaining approvals and mentioned DHHL has set a timeline so lessees would have an expectation as to when infrastructure would be finished. Sumida said moving the road would cause more problems then where it currently was.

Hall asked if DHHL had final subdivision approval to which Sumida answered no. Kapu asked how many roads ran through the project area, Sumida answered two. Kapu asked Sumida if he could explain the cul de sac option again. Sumida said the access for some of the Keokea people would be cut off forcing longer routes. Sumida said when the

engineer first designed the roadway about 7 months were spent going to the subdivision and shooting off different possibilities for roads. Sumida said the engineer took into account the elevation of the slope and the geography of the area and from that information determined what would be the best way to put the road. Sumida said the roads usually are placed on the flattest parts of the area. Sumida said if the road was moved up a retaining wall would need to be built because more of the slope would be cut and the wall would help to stabilize the bank. Sumida said if the road was moved down a retaining wall would still need to be built to help support the road. Sumida said the engineers made a determination to place the road where they did taking into consideration the cultural and archaeological aspects of the area. Sumida said he thought DHHL was very fortunate in only having one burial identified by SCS. Sumida said Road F where the burial was located had already been surveyed and SCS knows what's in the area. Sumida said if the road was moved, there would be no guarantee that another or multiple burials may be disturbed. Sumida said given the location of Road F and the fact only one burial was identified, leaving Road F where it was seemed to be the best option for all concerned.

Hall asked Dega to describe the surface feature of the burial located in Road F. Dega said for accuracy he would read what was written in the burial treatment plan (BTP), "Road F feature 1 consists of a previously unidentified rectangular shape platform measuring 2 meters long by 1.5 meters wide totaling 3 square meters. (Inaudible) interpreted by SCS as a habitation area, special use feature (inaudible) habitation features." Hall interjects to ask Dega if he could reread the sentence following the dimensions of the platform a little more slowly. Dega read "the feature was interpreted by SCS as a habitation area or special use feature auxiliary to adjacent habitation features. The platform was built on the upper portion of a (inaudible) slope." Hall asked the height of the platform to which Dega responded 80 centimeters high.

Hall offered Sumida another possibility for preserving the burial in place and said the council had a similar situation at a residential project along Kaahumanu Avenue and roughly *mauka* of the new Kaiser clinic called Sandhills Estates at Maui Lani. Hall said there was a burial in the roadway and the roadway could not be moved because basically the lots were set and there was no leeway to move the road. Hall said what was decided was to create a little traffic island with an area a little built up so the road would go around the burials and the burials would remain in place. Hall offered to accompany and show Sumida exactly where it was she was talking about. Hall also suggested Sumida speak with Lisa Rotunno-Hazuka who was present and who was the archaeologist on the project at Sandhills. Hall said the solution at Sandhills worked out very well and asked Sumida to look at and consider her suggestion of splitting the road to go around the section of the road where the burial was located. Sumida said Hall's suggestion would be looked into.

Frampton asked what were the minimum lot sizes for the particular area being discussed and how wide the road was. Sumida said the minimum lot size of a lot was 14,000 square feet and believed the roadway to be 40 or 42 feet wide. Frampton asked how wide was the pavement way to which Sumida said he would need to get back to Frampton with the answer. Hall asked if the roadway right of way was 40 to 42 feet wide to which the answer was yes. Hall said it was a pretty wide roadway. Hall said splitting the road in the area being discussed would be warranted. Sumida said Hall's suggestion would be looked into. Sumida said the road was surveyed and it is highly unlikely that anymore sites would be disturbed. Hall said the road was surveyed and while it may be unlikely finding more

burials, it was still a restricted and small area. Sumida said he would look into Hall's suggestion. Hall said the changes in the roadway at Sandhills occurred during construction. Hall said if her suggestion was feasible, she thought it could be worked out being that Waiohuli was much earlier in the development process. Kirkendall said she believes Hall's suggestion would work because the road at Waiohuli was much wider than the road at Sandhills. Kirkendall said if speed bumps were set in place on both sides of the burials to slow traffic that would also help the situation. Frampton said the roads at Sandhills are pretty wide. Lisa Rotunno-Hazuka said she couldn't remember how wide the road was but mentioned at Sandhills she had to deal with 6 burials. Hazuka said if the preservation area was 7 feet in width, then 3.5 feet would have to be added to each side of the road that would be lost. Hazuka said she doesn't see why the solution at Sandhills wouldn't work for Waiohuli, except for the elevation of the burial and the base of the platform. Hazuka said at Sandhills the road had to be raised a little in order for the road to go over the top of the uppermost burial. Sumida said he had a camera and would go out to Sandhills to take pictures of what was being discussed and from there would use the pictures to discuss with the engineers if Hall's suggestion was a feasible solution.

Hall asked Dega if the data recovery plan had been turned in for review and if not when would the plan be completed. Dega answered in about several weeks or 30 days from today's meeting. Hall asked Dega if when he submits his plan to SHPD for review if a copy could also be provided to the council. Mills asked for the council's manao on the prototype cultural programs discussed earlier and if the program was a good idea and something the council blesses. Mills asked if DHHL could proceed with drafting something in writing to further develop the previously mentioned programs. Hall asked Mills for more specifics on what sort of a recommendation DHHL was seeking. Mills said a recommendation on the establishment of a new cultural/burial training and assisting program within the DHHL. Mills said another aspect DHHL was seeking a recommendation from the council was on the possibility of finding future burials and establishing a common area within Keokea and Waiohuli for those burials. Fisher asked what was meant by "common areas." Mills said in the event future burials were discovered, if a common area could be established, then that area would be used for reinterment should the lessee not choose to be a steward. Hall said that was an issue because the outcome of a burial should not be a decision solely dependant on the lessee especially when the lessee did not own the burial. Hall mentioned burials could not be owned and said she was a little disturbed that a lessee could decide whether or not a burial could be preserved in place.

For the new council member's information, Hall said in the past the council had chosen not to identify an area where burials would be relocated because the council always felt it was really important to give each burial a full and independent look without deciding if a burial can't be preserved in place then the burial will go to the common area. Hall said both in Waiohuli and Keokea, there are large preservation areas which had been identified. Hall said without making a formal recommendation she would anticipate those preservation areas to be a place for the relocation of future burials. Hall said from the council's point of view and jurisdiction as was written in the statute where every burial site is considered significant, the council really did not like to predetermine what happens to burials. Hall said the council would prefer to treat each burial independently as they occur.

Fisher suggested that if a lessee was awarded a lot with a burial and decided they didn't want the burial on the property, suggested the lessee could switch or be given another lot instead. Fisher said it would not be right for a lessee to be able to have the choice of relocating a burial.

Hall said although DHHL was subject to NAGPRA and not HRS 6E-43, it seems very strange that an individual lot owner would be in a position to decide preservation in place or relocation of burials on DHHL lands when anyone else in the State of Hawaii can't make that decision. Hall said she would like the Maui / Lanai Islands Burial Council in the case of previously identified burials for SHPD in consultation with the relevant council, any lineal and/or cultural descendants identified and anyone else who may be interested in the matter. Hall said it would be better to have an entity be the responsible agency in charge with the determination to preserve in place or relocate and not an individual lessee. Hall said she thinks it would set a terrible precedent if a lessee was able to make determinations. Kanakaole agreed with Hall and said each burial should be dealt with individually on a case by case basis because to allow lessees the choice of what happens to a burial would be setting a bad precedence throughout the state. Kanakaole said if a burial was on a property and the lessee didn't like it, then that's too bad because the lessee needs to understand the burial would be part of their *kuleana*.

Sumida said DHHL would address the council's concern in the programs Mills had mentioned earlier and mentioned the council's concerns would be part of the informational and educational packets. Kapu wanted to be sure the issue would be addressed in the cultural and training program. Sumida assured the council that their concern about DHHL allowing lessees to make a determination on burials would be addressed and said he understood the sensitivity of the issue.

Sumida said DHHL would address the possibility of finding burials in the construction of the roadways. Sumida said DHHL would look into the possibility of creating a traffic island around the burial and if it was something feasible then creating traffic islands could be a solution to the problem of possibly encountering future burials. Sumida said if the traffic island idea was not feasible, he would hope the council would be agreeable to having a burial relocated to the already designated preservation areas. Hall said the main thing was to assess each burial as they occur and not have a predetermined outcome for burials.

*Hall started to make a motion but at the suggestion of Mills that at the current point in time a motion would be premature, Hall did not propose a motion.*

Mills said DHHL could attempt to establish an archeological position within the department but what the council was recommending may fall outside of DHHL administration which may require the department to go seek legislative funding. Hall inquired about DHHL having an historic preservation specialist. Mills said DHHL could try and attempt creating such a position within the department. Mills said he was hoping DHHL could get a letter from the council relating to the educational program for the lessees. Mills said maybe the letter was not a priority at the current point in time.

Kirkendall said DHHL currently had people within the department who could manage the education programs to which Mills basically answered yes (because both he and Kanai Kapeliela are former employees of SHPD). Mills said DHHL wants the program to happen

because it would help everyone in the long run. Mills said if the program did not happen what could result was essentially delaying a problem in the future if DHHL did not start educating lessees right away. Mills said the last thing DHHL wants, would be to scare away lessees. Mills said the program would help bring ownership and stewardship for native Hawaiians to native Hawaiian preservation sites which were in a sense, in the council's hands. Mills said because the mission of DHHL is to provide homes for native Hawaiians, mentioned the 6 burials at Waiohuli are native Hawaiian burials and also needs to be given a home. Hall asked what the program being discussed would be called. Mills said currently the program was being called the Waiohuli Cultural and Burial Training and Assistance Program. Mills said Waiohuli would be used as a prototype and ideally DHHL hopes the program becomes the Hawaiian Cultural and Burial Training and Assistance Program. Mills said eventually DHHL hopes to develop more of a Hawaiian name for the program. Hall asked if DHHL sees the Cultural and Burial Training and Assistance Program as being directed towards individual lessees who may have sites on their property to which Mills answered yes. Hall said the council did not necessarily have any objections towards the program. Hall said what the council was concerned about was that DHHL needs to have the ultimate say for the outcome of burials that may be on a lessee's lot. Hall said the ultimate responsibility needs to stay with DHHL.

Mills said maybe his request for a letter was a little unfair for the council and mentioned he would go back and develop the program more. Mills said he thinks as the program develops, the council would feel a little more comfortable with what DHHL was proposing because the plan would be more detailed and would address the council's concerns. Mills said he would return at a future meeting when the DHHL had something better to present. Hall agreed with Mills and also thought it would be better if he came back to another meeting to present when DHHL has something more concrete. Hall reiterated her concern about who gets to decide the outcome of a burial as to preservation in place or relocation. Hall thanked Mills and Sumida for attending and sharing at the meeting.

*Charles Maxwell resumes to chairing the meeting.*

**C. RECENT INADVERTENT BURIAL DISCOVERY AT VICTOR CAMPOS PROPERTY, WAILUKU AHUPUAA, WAILUKU DISTRICT, ISLAND OF MAUI, TMK: 3-4-039:076**

**Information / Recommendation:** Discussion of inadvertent burial discovery and mitigation.

Mike Dega of SCS archaeology identified himself. Hall asked if Dega had anything new to report. Dega said the burial had been checked every other day by someone from SCS and so far there had been no problem with erosion and the burial was still adequately protected. Dega said two workers for SCS screened the sand pile directly beneath the burial and recovered the mandible. Dega said he went under the tarp to view and reassess the burial. Dega said during construction work the cranium of the individual was exposed, but mentioned the individual was not hit. Dega said about 3 days after the exposure of the cranium and because there was nothing to support the exposed feature the mandible fell off into the sand below. Dega said it was at that time when the Vice-Chair and Kirkendall went and did their site inspection. Dega said the mandible fell due to a gravitational erosion and because there was nothing to hold the burial up and in place. Dega said a couple workers for SCS were able to find the mandible right away. Dega said

currently the burial was still preserved in place. Dega said he spoke with the landowner Victor Campos about creating a structure behind the concrete retaining wall in order to protect the burial. Dega said he and Campos had discussed the possibility of constructing a three sided concrete structure built behind the retaining wall which would be filled with sand over the top of the burial. Dega said Campos was supposed to give him plans of what he had just mentioned to construct but informed the council he was still waiting for the plans.

Hall asked Dega if the cranium was cracked to which Dega answered yes. Dega said when he reassessed the burial, he did not see any indication that the cranium had been hit mechanically or disturbed in any other way. Dega said he thinks the damage to the cranium was a symptom of the mandible falling and the cranium being on its side at a 45 degree angle. Hall said the top of the cranium was cracked. Dega acknowledged what Hall said but mentioned he didn't think the damage was the result of anything mechanical. Dega said if the backhoe bucket had hit the burial, there would have been lots of fragmented pieces in the area and mentioned the burial was still intact.

Hall said the wooden structure currently at the Campos property doesn't touch the burial and mentioned it wasn't holding the dune in place. Hall said there was a space between the burial and the tarp where the wood was. Dega agreed with Hall and said the wood was sort of like a lean-to into a vertical face (creating somewhat of a triangular space). Dega said the wood and tarp was mostly to protect against the elements such as wind and rain from going directly onto the burial. Hall acknowledged what Dega had said and clarified that she didn't want the council to get the impression the wood was holding dune face intact. Dega agreed with Hall and said the wood was not holding the dune face intact.

Dega said he had spoken with the landowner about getting something in place quickly to preserve the burial permanently. Dega said the landowner has followed the council's advice in constructing the retaining wall in segments and kept the sand slope in front of the burial to prevent erosion in that area. Hall asked if the section of the wall which fronts the burial had not yet been completed to which Dega answered correct. Dega said the little space in front of the burial was where the landowner would put concrete to help secure the burial first and then construct the retaining wall. Hall said she had thought the retaining wall would be built first.

Kanakaole asked what the fine was for someone who damages a burial. Kirkendall said the Campos incident was not a violation because the incident occurred during archaeological monitoring. Kanakaole asked if there was any violation. Kirkendall said in the particular incident being discussed there was no violation because the burial was encountered during monitoring to which all worked had ceased in the immediate area and the appropriate people were notified. Kanakaole asked for his own knowledge, what the penalty would be for someone who damages a burial. Deputy Attorney General, Vince Kanemoto said HRS 6E-11 was recently amended for criminal violations. Kanemoto said the basic statutory language to determine if a criminal violation had occurred would need mens rea which requires a person's mental state of mind to knowingly do something that was wrong. Kanemoto said the basic statutory language for 6E-11 was if you take, appropriate, excavate, injure, destroy, or alter any historic property, artifacts, burials, or the contents thereof and mentioned if a person knowingly commits any of those acts, it would be a misdemeanor offense. Kanemoto said he believes the amendment to 6E-11

makes a violation punishable by federal imprisonment of up to 1 year and/or a fine of up to \$25,000. Kanemoto repeated that in order for a criminal violation to occur, a person would have to knowingly do something illegal. Maxwell asked if knowing would be the intent to which Kanemoto answered correct. Kanemoto said a criminal act would need several components, one would be mens rea which would be the state of mind versus knowingly, another would be actus reus which would be the actual act of either taking, appropriating etcetera. Kanakaole asked if a person doesn't know a burial was present in an area then it would not be a violation to which Kanemoto answered correct. Kanemoto said if there was a gravestone and a person went with a backhoe to start excavating right by the gravestone, then that would clearly indicate a knowingly violation. Kanemoto said a person must prove beyond a reasonable doubt in criminal offenses in order for punishment to occur. Kanemoto said for civil violations a person only had to prove it's more likely than not a violation was committed. Kanemoto said a criminal violation requires a lot of hard evidence in order to convict a person.

Maxwell said there was an incident at Maliko where a person(s) pitched a tent next to graves and the task of showing the intent that the tent was pitched and intruded onto burials was an issue. Kanemoto said the law has different states of minds such as an accident which for whatever reason means an honest mistake was made, negligence which means a person did not follow the reasonable standard of care ordinarily done by most, knowingly which means it was practically certain a wrongful act was committed, and intentionally which means a person knew and still committed a wrongful act. Kanemoto said for knowingly and intentionally, if there was gravestone on the surface a person would at least know that there might be a grave present, but if there was a bone visible from the surface next to the gravestone and a person still excavated then that would be intentional violation. Kanakaole expressed how fines should be assessed on violators so people understand they can't just do whatever they want and realize there are consequences. Kanemoto said in criminal law accidents are never prohibited. Kanemoto said the lowest state of mind a person could be criminally prosecuted would be for negligence, such as negligent homicide. Maxwell asked if any fines had been levied against anyone since the amendment of 6E-11. Kanemoto said there were some pending investigations but to his knowledge no fines had been levied.

*A person in the audience requested to submit oral testimony. Maxwell said he usually lets the audience submit testimony at the end of an agenda item, but mentioned he would grant the person's request to testify.*

Curt Tokunaga asked what sort of time frame the landowner had for completing the retaining wall and what sort of time frame the landowner had for preserving the burials on the Campos property. Tokunaga asked what was the buffer zones for each site on the property. Dega said a reburial was done for the first site found during the inventory survey. Dega said the reburial was marked and surrounded by the orange construction fence and had a buffer zone of about 14-17 feet. Dega said the burial which had already been reinterred was preserved permanently. Dega said the second burial would be preserved in place with concrete in front of the burial and in back of the retaining wall. Tokunaga asked when was everything to be completed. Dega said according to SHPD the landowner has 90 days. Tokunaga asked if the 90 days had expired. Dega answered no and said the 90 days would expire around December 21, 2005. Tokunaga asked if any excavation had occurred behind of the retaining wall to which Dega answered no.

Maxwell asked Tokunaga to direct his questions to the council. Tokunaga asked what the landowner's intentions were as far as what would be constructed in front of the retaining wall. Maxwell said the answers to Tokunaga's question was covered in previous burial council meetings and mentioned if Dega wanted to, Dega could answer Tokunaga. Dega said to preserve the burial the landowner would construct the retaining wall. Dega said what would be constructed in front of the retaining wall was a separate issue that would require the landowner to obtain further permits. Tokunaga asked if the landowner had to go to the county to obtain more permits, would the landowner also need to come back before the council. Kirkendall said SHPD would receive the permits and mentioned SHPD only makes recommendations to the county regarding preservation of historic property. Kirkendall said SHPD does not control what form of development the landowner decides to construct. Tokunaga asked what if the landowner does more excavation work. Kirkendall said as far as SHPD knows the excavation work was completed, monitored and so far, satisfied the conditions of the permit. Kirkendall said the retaining wall was to demarcate the back portion of any development and to retain the dune. Maxwell said if and when the landowner decides to build, the permits would go to SHPD for review.

Tokunaga asked what the buffer zone was for the burial which would be preserved in place. Kapu interjected to say he believed Dega said he did not receive any plans from the developer. Dega confirmed what was mentioned by Kapu and said the plans he was waiting for was for the inadvertent burial found during construction. Dega said the conditions for the burial with the orange fence had been satisfied and completed. Dega said he thought the buffer zone for the inadvertent burial would be at least 8 feet.

Hall said one of the concerns she had was there would be no 2 to 1 slope being maintained behind the finished height of the retaining wall. Kirkendall said Lance Nakamura of DSA (Development Service Administration) sent an inspector out to the Campos property and did not find anything out of compliance with the submitted plan from the landowner. Hall said there needs to be discussion about the remainder of the dune face which exceeds to height of the retaining wall because there was no way the dune would hold over time. Kirkendall suggested addressing Hall's concern with Nakamura and have DSA do a follow up inspection. Maxwell asked Kirkendall if she would be the person doing the follow up inspection at the Campos property. Kirkendall said she would be more than happy to contact Nakamura to address Hall's concern but mentioned she didn't think she would be the person doing the follow up. Hall said the matter was in determining if the county has a requirement to maintain a 2 to 1 slope upon completion of the retaining wall construction. Hall said if the county does not require a 2 to 1 slope then there could be some future problems.

Kapu asked if when the burial was found if there was ever any notification to try and contact lineal descendants. Hall said no because there had not been any lineal descendants identified for the particular area at the current point in time. Kapu said he thought it would be a common practice for the burial council to try and notify possible lineal descendants. Kapu said if the council makes recommendations and in the future a lineal descendant was identified it could lead to problems for the council. Hall said if lineal descendants had been identified they would have been contacted. Maxwell said he thought when burials were found, notification in news papers were normally published. Kirkendall said generally notification was not published for inadvertent discoveries. Hall



said the period of time for making a determination on an inadvertent burial was two days on the neighbor islands for findings of a single individual and three days for multiple individuals. Hall said if there were any lineal descendants that were identified they certainly would have been consulted with respect to the particular burial(s). Hall said for the inadvertent burial there are no lineal descendants which have been identified. Kirkendall said there weren't any descendants identified for the burial which had already been preserved (site 4730 feature 1) and mentioned formal notification was filed in the papers. Dega said he would speak with the engineers on the Campos project to also do a follow up with Nakamura of DSA to address the concern of the dune that exceeds the height of the retaining wall.

**D. HUMAN SKELETAL REMAINS IDENTIFIED ON THE STEVENS PROPERTY, MAKENA, MAKAWAO DISTRICT, ISLAND OF MAUI; TMK: (2) 2-1-006:104**  
**Information / Recommendation:** Discussion of Draft Burial Treatment Plan and Reinterment Location for Human Skeletal Remains.

Lisa Rotunno-Hazuka (identified herself and handed out copies of a burial treatment and preservation plan) said she had spoken about the agenda item at the previous two MLIBC meetings but never had a final burial treatment and preservation plan for the council to review. Hazuka asked if she could get a motion on record from the council to accept the treatment of the burial and another motion at a future meeting to accept the preservation plan after the council had had time to review the plans. Hall wanted clarification on what Hazuka was requesting from the council and asked if the burial for the agenda item was previously identified to which Hazuka answered yes. Hall asked if the burial being discussed had any in situ element to which Hazuka answered no. Hall asked if what was being discussed was the disturbed fragmented remains of two individuals that would be reburied on the Steven's property to which Hazuka answered yes. Hall said the item needs to be on the agenda for a determination. Hazuka asked what the item was placed on the agenda for to which Hall said for information/recommendation. Hall said the item could be placed on next month's agenda for determination but the council couldn't make a determination at the present time. Hazuka said she would come back at next month's MLIBC meeting for a determination on the particular agenda item.

**E. BURIAL SITE IDENTIFIED ON LEFEVRE PROPERTY, NIUMALU AHUPUAA, HANA DISTRICT, ISLAND OF MAUI, TMK: 1-7-3:16**  
**Information / Recommendation:** Discussion of burial site identified during archaeological inventory survey.

Mike Dega of SCS archaeology identified himself (Dega handed out copies of a map) and said on Friday, August 12 a human burial was identified within site 5421 as feature 10 during sub-feature 4, test unit 13 compliance work. Dega said the landowner Stephan Lefevre has a BTP which had been accepted and an inventory survey which had been completed. Dega said mounds 1, 2, and 3 were preserved several years ago as possible burial areas with the orange area representing the buffer zones set around the sites. Dega said Kirkendall had requested SCS to verify if the landowner was in compliance with preserving burial sites as well as preserving archaeological features on the landscape. Dega said the burial was identified during compliance work. Dega mentioned the compliance work was being written. Dega said several previously unidentified features were found in the burial area. Dega said the features found were labeled as 4, 5, 6, 7, and

8 and mentioned the features were all mounds. Dega said part of the compliance work included mapping and recording sites that had been disturbed. Dega said during the compliance work was when feature 4 was identified. Dega said feature 4 was a mound measuring 2.6 meters long by 2.5 meters wide and 0.25 meters in height. Dega said the human skeletal remains were initially identified at 0.25 meters or 50 centimeters below the natural soil surface. Dega said once the remains were identified SCS had stopped work. Dega said the burial was completely covered for protection. Dega said feature 4 was found outside of the buffer area. Dega said the buffer area was still intact with orange construction fencing up and maintained. Dega said once the burial was discovered the orange construction fence was immediately moved to encompass the burial within the buffer zone.

Maxwell asked if the burials were within or under the rock walls in the area. Dega said the burial was within the rock wall perimeter. Hall asked if feature 10.4 was on the original parcel for which the inventory survey was conducted to which Dega answered yes. Hall asked if a report was submitted for the burial discovery. Dega said he submitted a letter to SHPD's Burial Site Director, Sunny Greer informing her about the burial discovery. Dega said some confusion about if the burial would be identified as previously identified or inadvertent resulted because the burial was discovered during the compliance work. Hall asked if the council could get a copy of the letter Dega had sent to Greer. Dega said he would provide a copy for the council. Hall asked Dega if he had received a response from SHPD on the letter he submitted to Greer to which Dega answered no. Dega requested Kanakaole the Hana representative of the burial council to go out to the site. Dega said SCS would show Kanakaole the area, where the burial was and the other mounds which were present. Dega said SCS would submit a revised BTP to encompass the recent burial discovery. Hall asked Dega if anything else had been submitted to SHPD as a result of the compliance work conducted. Dega said the letter he submitted to SHPD was a notification of the burial and was the only letter he had submitted. Hall said upon the completion of the compliance work, suggested SCS send a copy of the compliance report to Kanakaole and the Vice-Chair. Kirkendall requested to be present at the site as a representative for SHPD when Kanakaole made his visit with SCS. Dega said he would coordinate a date to visit the site which was convenient for all parties involved.

**F. INADVERTENT DISCOVERIES AT LAMBERT PROPERTY, PAULAEA  
AHUPUAA, MAKAWAO DISTRICT, ISLAND OF MAUI, TMK: 2-1-11:14**

**Information / Recommendation:** Discussion of Inadvertent burial discoveries and mitigation.

Lisa Rotunno-Hazuka of Archaeological Services Hawaii (ASH) identified herself and said ASH was conducting the monitoring at the Lambert property where the burial discovery was found. Hazuka said there was a cultural deposit on the Lambert property which had been preserved. Hazuka said the landowner wanted coconut trees that were on the north side of the property to be relocated towards the ocean. Hazuka said ASH had monitored the relocation of three coconut trees and after the removal of the fourth tree portions of a cranium were discovered in the pit from which the tree was removed. Hazuka said the monitor was present when the burial was discovered and mentioned a flat edge blade was used. Hazuka said ASH checked all the pits that resulted from the removal of the coconut trees and screened all soil around the pits. Hazuka said during screening ASH found another bone fragment. Hazuka said another cranium was found in the wall of a pit near

the ocean and mentioned the burial appeared to be intact. Hazuka said upon discovering the second burial all worked stopped and a letter was drafted to Sunny Greer of SHPD. Hazuka said the proposal would be to reinter the disturbed human remains back into the coconut holes from which they were found. Hazuka said ASH was unsure as to the origin of the cranium but mentioned the cranium did look to be previously disturbed. Hazuka said ASH did inventory level testing for an adjoining parcel to the south of the Lambert property. Hazuka said disturbed human remains and military trash were found on the adjoining parcel. Hazuka said all the remains were currently being curated at ASH's office. Hazuka said the burial that was still intact in the pit wall asked for the burial to be preserved in place. Hazuka asked that the displaced remains be reinterred back into the coconut pit.

For clarification Fisher asked if the bones were being curated at ASH's office. Hazuka confirmed the *iwi* from the Lambert property were being curated at ASH's office. Hazuka said ASH had closed their Maui Lani lab and moved into a bigger office. Fisher asked how far away was the area being discussed from Opana Point. Hazuka said the area was near Polo Beach and mentioned there were other burials identified at the northern end of Paulaea Beach. Hall asked Hazuka if the in situ individuals would be preserved in place to which Hazuka answered yes.

**G. HAWAIIAN CEMENT SAND MINING OPERATION, WAILUKU DISTRICT, MAUI; TMK: 3-8-07: portion of 101**

**Information / Recommendation:** Discussion of Inadvertent Burial Discoveries; Mitigation for Previous Inadvertent Burial Discoveries; Status Update on State and County Special Use Permit Application for Hawaiian Cement Extraction of Sand and County Grading Permit.

Lisa Rotunno-Hazuka identified herself as the representative for Hawaiian Cement (HC). Hazuka said she had a meeting with HC and Alexander & Baldwin (A&B) after the last MLIBC meeting in August. Hazuka said screening and mining was still being done by HC. Hazuka said there was a proposal to do more mining by another company. Hazuka said she spoke with A&B about bringing closure for the confirmed 52 burials and the 8 other probable burial sites. Hazuka said A&B had agreed to an 8 acre preservation area near where the concentration of burials was identified. Hazuka said there was an access road that divides the sand mining area. Hazuka said HC started mining in area B where 1 in situ burial and 3 previously displaced remains were discovered. Hazuka said she was working out the details on how the burials would be preserved within the 8 acre preservation area.

Maxwell asked how many burials were already identified at the project area. Hazuka said there were 52 confirmed burials. Hazuka mentioned a lot of the burials were previously disturbed. Maxwell said it was obvious the project area was an ancient burial ground and wanted to know when was mining going to stop. Maxwell said he had been asking when was mining going to stop in the project area for about two years. Hazuka said she wasn't sure she could answer Maxwell's question.

Kapu said if HC knows there burials within the project area asked if 6E-11 would be triggered pertaining to the criminal act of knowingly mining an area that has burials. Hazuka said the protocol for HC when a burial was discovered was to stop work in the

area so the burial may be assessed and then the burial would be given a 50 feet buffer. Hazuka said once the burial had been assessed, work could resume outside of the buffer area as long as a 2 to 1 slope was maintained. Hall said the property being discussed was a 63 acre lease by HC which was a portion of the 400 acre property owned by A&B. Hall said although the council knows there's a high probability of sand dunes containing burials, neither the county nor the state would preclude development in an area because the council would not be able to prove exactly where burials in a sand dune were. Hall said if burials were identified during an inventory survey or some other means which would make a burial previously identified, in those situations the council could make decisions on what happens to the burial. Hall said the process for preserving burials and the way the law was written is what it is. Maxwell said the mission of the burial council was created to protect and preserve the *iwi* of *kupunas*. Maxwell said he was frustrated with HC and the mining situation because he had been asked by other people on other islands how could the burial council allow HC to continue mining when 60 burials were already found. Maxwell said burial council members should object to HC's sand mining operations. Hall reminded Maxwell that A&B has agreed to preserve the area where the high concentration of burials was. Hall mentioned a number of burials found during sand mining would be preserved in situ. Hall said neither SHPD nor the MLIBC had given permission to A&B or HC to relocate or remove any of the burials from the project area. Hall said A&B had finally reached a point where they are doing a preservation plan. Maxwell was frustrated because despite the burials that would be preserved and the preservation plan that would be done, said HC continues to mine the area. Maxwell said as long as the area was continued to be mined more burials would be found. Maxwell said he was frustrated because the council knows there are more burials in the area that was being mined but the council really can't do anything about the situation.

Fisher asked if an archaeological monitor was present during mining. Hazuka said an archaeologist was present and that was how ASH was able to identify 52 burials. Kapu asked what the possibility was for sand to be loaded on a dump truck and taken somewhere else only to have a burial in the sand and someone speculating the burial originated from somewhere other than the 63 acres being leased by HC. Hazuka said what Kapu had asked, had happened. Hazuka said all the sand mined for concrete was be screened on site. Hazuka said the surface sand or the dirty sand which contains a lot of phosphorus would be screened off site. Hazuka said the dirty sand would be pushed into a stockpile to be loaded onto a truck and taken away. Hazuka said there had been very few instances where ASH had to chase sand and track down a truck that had been thought to have a burial. Hazuka said in the instances where ASH did chase sand, ASH was able to recover the remains.

Kapu wanted to know if HC knew burials were present in an area and continued to mine asked if HC would be subject to fines. Kanemoto said just knowing burials are in an area would not warrant any fines. Kanemoto said if mining occurred exactly where a burial was known to be then a fine may be warranted. Kapu said he was trying to understand the process of how things worked. Hall said Kanemoto had explained that a person would need to know exactly where a burial was and then mine in order for the action to be subject to 6E-11. Kanemoto said just because burials were found in the past at a particular area and new burials are found later, didn't mean a person knowingly disturbed a burial site. Kanemoto said the law didn't like to criminalize accidents and negligence. Kanemoto did mention that it may be negligence on HC's part where 50 burials were

identified and they continue to mine and find more burials. Kanemoto said even if HC was determined to be negligent with their mining, the law pertaining to burials only prohibits acts that are knowingly or intentionally committed. Kanemoto said 6E-11 did not include or define negligence as a means to subject a person to a fine. Kanakaole said a provision should be in place because if a person knows burials were in an area and still digs in that area and then runs into a burial, felt there had or needs to be a way to fine the person. Maxwell said Kanakaole's point was one of the reasons it can be frustrating when council members have to work within the limits of the law. Kanemoto said HRS 6E was a very delicate meshing and balancing between development and preservation.

Kapu asked if A&B was only concerned about protecting and preserving the burials which were already found wanted to know what would happen if burials were continued to be found in the future. Hazuka said the HC issue had been ongoing for over 2 years and the council had been very adamant in requesting a preservation plan. Hall mentioned the concentration contained within the 8 acre area warrants preservation of the whole area. Hall said to date the council was not aware of any burials having been identified at project area A. Maxwell reiterated his frustration about the rules and laws which in some instances prevents the council from doing the best job they can.

Fisher asked if there was new technology available such as a radar which could detect what was in the ground before mining the area. Hazuka said there were some technology available which gave a general representation of the area but nothing to the extent of what's needed. Kapu asked where the project area was. The project area was explained to be in Waikapu near Apana's junkyard. Hazuka said the same sand dune that runs through Maui Lani was the same sand dune at HC's project area. Hazuka said the sand dune runs from Kahului Harbor to Kuihelani Highway. Maxwell apologized to Hazuka for venting his frustration. Hazuka said she will work with A&B to develop the preservation plan and would come back before the council at a future meeting. Hall said although the council made a motion for the Vice-Chair to draft a letter to A&B mentioned the letter was no longer necessary because Hazuka had been granted permission to start working on a preservation plan by A&B. Hall said if Ameron or another company applies for a grading permit, the permit would go to SHPD for review and at that time an objection to further mine in the area could be made.

## **H. CASE UPDATES / OTHER INADVERTENT DISCOVERIES**

**Status Update on Recent Inadvertent Burial Discovery at Waiehu Beach Park, Wailuku Ahupuaa, Wailuku District, Island of Maui, TMK: 3-2-13:025; Status Update on Kaulahau Burial Site 50-50-05-1064, Hamakuapoko, Maui; Status Update on Implementation of Interim and Long-Term Preservation Measures in Burial Preservation Plan for Site 4142, Honolulu, Lahaina District, Maui, TMK: 4-2-004:031.**

Status Update on Recent Inadvertent Burial Discovery at Waiehu Beach Park, Wailuku Ahupuaa, Wailuku District, Island of Maui, TMK: 3-2-13:025.

Kirkendall said she contacted John Buck who would get back to her. Kirkendall said once more information becomes available to her she would then pass the information on to Sunny Greer of SHPD who would contact county parks. Hall said John Buck was the

Deputy Director of Parks for the county. Hall said the council didn't know about the burial and asked Kirkendall to describe it. Kirkendall said she was called by Charles Maxwell Junior who informed her two burials were discovered at Waiehu Beach Park. Kirkendall said one burial had a visible cranium and was found under an uplift of concrete sand. Kirkendall said the other burial needed to be explored and excavated a little to determine its location. Kirkendall said the burials needed to be excavated to protect against high waves. Hall said the burial looks to extend inland and needs immediate attention because the burial would be affected by the elements. Hall asked how high up was the burial. Kirkendall said the burial was about 75 centimeters from the beach. Maxwell asked if the burial was on property owned by Maui Coastal Land Trust to which Fisher answered no. Hall said the burial was in jeopardy of being swept out by waves. Hall asked if Greer would contact John Buck. Kirkendall said she was informed to pass Buck's phone number onto Greer so Greer could contact him. Hall wanted to know who asked Kirkendall to pass Buck's number onto Greer. Kirkendall said she was asked by Greer.

Kanakaole asked what the normal procedure was for dealing with a burial of this nature. Hall said the burial was a complicated issue because the state owns the property up to the high water mark of the waves which may reach the bank of where the burial was located. Hall said because majority of the burial extends inland onto property owned by another entity, it's hard to say if the burial falls under state jurisdiction. Kirkendall said she really tries to work closely with property owners to get them more involved in assisting SHPD with caring for burials because in most situations the burial does have to be removed and relocated. Kirkendall said the way the rules read was if an inadvertent burial was discovered on a property that was not in a development context, then it would be SHPD's jurisdiction to remove and care for the burial. Kirkendall said if the inadvertent burial was found on the property during a development activity, then the property owner would become responsible for caring of the burial. Kirkendall said regardless of where a burial was found and regardless of if a property was in a development context or not, she had always tried to work with the property owner in caring for burials. Kirkendall said most recently she has been working with A&B who is willing to assist in caring for burials on their property out at Kaulahau. Kirkendall said the county had in the past been very helpful in assisting SHPD with burials that were found on county property. Kirkendall said no one agency had the resources to care for all burials. Kirkendall said she was hopeful that A&B, the county and SHPD would eventually be on the same page so collectively they could resolve the situation out at Kaulahau. Kirkendall said traditionally she would go out in the field to excavate a burial.

Maxwell asked what role would Greer play with the burials at Waiehu Beach Park. Kirkendall said Greer's role would be to make the determination on if the burial would be removed or preserved in place. Kirkendall said she had recommended the burial be removed which was a decision that was made in consultation with the Vice-Chair. Kirkendall said she also indicated the idea of getting the county on board in assisting with the burial given SHPD's staffing situation. Kirkendall said she thought Greer would be calling the county to work on getting them more involved. Hall asked if Greer headed the burial sites program. Kirkendall said Greer was the Cultural Programs Director which she thought oversaw the burial sites program. In consultation with Farm, Kirkendall said since all inadvertent forms go to Greer it was their understanding that Greer was handling the burial sites program. Maxwell said if Greer did not work on the issue expediently, what would happen. Maxwell said since the burial could be impacted by waves asked if the

council could make recommendations on the issue. Kanemoto said the council under the law is mandated to make recommendations regarding any matter relating to native Hawaiian burial sites. Hall wanted to know who was making the decision on the outcome of the burial. Kirkendall said it was her understanding that Greer would make a decision in consultation with her and the council.

Kaahui asked who owned the property. Kirkendall said she believes Maui County Park Division owns the property. Maxwell asked Kirkendall if the council wanted the situation expedited, the council would need to make a motion for the removal and curation of the remains to which Kirkendall answered yes. Hall asked Kirkendall if she was willing to take on the responsibility of what Maxwell had asked to which Kirkendall said no. Kanemoto said he was concerned about the council making a recommendation because the agenda categorized the Waiehu issue as a case update and did not state any type of recommendation would be made. Maxwell said he understood what Kanemoto was saying and asked how the council could expedite the issue given the burial was in danger. Kirkendall said she would give Mr. Buck a call to see if county parks would be willing to work with SHPD on handling the burial and mentioned if county parks were unwilling to help, volunteered herself to go out and remove the burial. Hall said she did not know what happened to the burial sites program because there were no burial sites program people left. Hall said the lack of burial sites staff was not a good thing for SHPD and suggested the council during the announcement section of the agenda request that an item be placed on next month's agenda where the council could address the issue of adequate staffing for SHPD's burial sites program. Kirkendall said SHPD did not have a burial sites program but mentioned on Oahu when a burial was in imminent danger, the assistant archaeologist for Maui, Cathy Dagher would go out and remove the burial. Kirkendall said both she and Dagher had been operating in that type of capacity and would continue to do so until adequate staffing for the burial sites program had been fulfilled. Maxwell said he felt comfortable with Kirkendall trying to get the county involved and suggested the council wait until the status of what the county would do was known.

#### Status Update on Kaulahau Burial Site 50-50-05-1064, Hamakuapoko, Maui.

Kirkendall said Kaulahau had a continuing problem of burials eroding out of the dune face. Kirkendall said Jenny O'Claray was working with Hazuka and the county in removing burials prior to being inadvertently damaged. Kirkendall said the county was working with SHPD on the issue. Hall said Hazuka had been paying O'Claray to go out to Kaulahau to remove burials that were endangered of being damaged. Hall said the most recent burial O'Claray attended to slumped out of the Kaulahau dune face where part of the burial remained in the dune face and part slumped down to the base of the dune. Hall said O'Claray screened the sand and retrieved all the *iwi* which had slumped out of the dune and recommended removing the remainder of the individual. Hall said the pit from which the individual was removed had other burials clearly visible. Hall said there was a very dense concentration of burials in the area. Hall said O'Claray did stabilize the other visible burials temporarily until they two would need to be removed. Hall said the County of Maui had funded a stabilization plan which focused on using vegetation to try and hold the area in place. Hall said the county did not do the work yet.

Kirkendall said there was an area where vegetation had been removed by hand and mentioned the majority of the vegetation had been pushed and dumped over the side of

the dune. Kirkendall said on a site visit she and O'Claray walked through the small cemetery that was leased to The First Assembly of God Church from A&B. Kirkendall said she thought the cemetery was a historic cemetery but mentioned there had been additional burials excavated. Kirkendall said she and O'Claray saw a back dirt pile near where the brush had been removed and noticed human skeletal remains in the pile. Kirkendall said she and O'Claray also found human skeletal remains on the surface of where a person was recently interred. Kirkendall said she went out to Kaulahau at another time with Jason Koga the land manager for A&B who was also investigating the issue and was working on rendering the cemetery inactive.

Fisher asked Kirkendall if she was saying that a pre-contact individual had been excavated through, to which Kirkendall answered yes. Hall said the small cemetery was only a few meters away from the Kaulahau site and mentioned the Kaulahau burials extends onto the property leased by the church. Kirkendall said A&B also wanted to employ a stabilization plan. Kirkendall said she didn't think the burial sites program reviewed a stabilization program and mentioned she would review the proposed stabilization and preservation measures for Kaulahau. Kirkendall said she would send out an approval letter for A&B that would hopefully get the county on board with helping to stabilize the area. Kirkendall said A&B is willing to care for the burials eroding out of the dune face on property they owned.

Status Update on Implementation of Interim and Long-Term Preservation Measures in Burial Preservation Plan for Site 4142, Honolua, Lahaina District, Maui, TMK: 4-2-004:031.

Hall said there was no update on the agenda item at the present time because she had not heard back from Rory Frampton who was handling the item.

## **VII. ANNOUNCEMENTS**

Hall said the council wanted an item placed on next month's agenda addressing SHPD's staffing positions for the archaeology branch and the burial sites program.

## **VIII. ADJOURNMENT**

Frampton moved and Fisher seconded, "to adjourn the meeting at 12:35 p.m."

VOTE: ALL IN FAVOR. The motion carried unanimously.

Respectfully Submitted,

Kawika Farm  
Clerk Stenographer II  
State Historic Preservation Division



